IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 27 OF 2005
In
SPECIAL CIVIL APPLICATION NO. 6730 OF 1990
With
LETTERS PATENT APPEAL NO. 28 OF 2005
In
SPECIAL CIVIL APPLICATION NO. 7075 OF 1990
To
LETTERS PATENT APPEAL NO. 32 OF 2005
In
SPECIAL CIVIL APPLICATION NO. 647 OF 1991
With C.A. Nos.171/05 to 176/05

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ONGC LABOUR UNION - Appellant(s)

Versus

UNION OF INDIA & 5 – Respondent (s)

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Appearance :
MR. N.R. SHAHANI for Appellant.
MR. JITENDRA MALKAN for Respondent No(s).: 1.
GOVERNMENT PLEADER for Respondent No(s).: 2, 5,6.
M/S. TRIVEDI & GUPTA for Respondent No(s).: 3,4.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/07/2005

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. These are appeals against the Judgement dated 25th/26th November, 2004 passed in Special Civil Application No.6406 of 1991. The learned single Judge disposed of number of matters by his common judgement. It is to be seen that some application was made by ONGC Labour Union to the Central Government for making a reference under Section-10 of the Industrial Disputes Act, 1947. The reference was declined, therefore, the Labour Union filed Special Civil Application No.3788 of 1985. The said Special Civil Application was heard along with number of other matters. The learned single Judge found that the prayers made by the ONGC Labour Union could not be granted. It appears that in relation to some other demands, the ONGC Labour Union filed Special Civil Application No.6730/1990, 7075/1990, 8828/1990, 1666/1991, 6406/1991, 647/1991. The prayers made in different Writ applications are as under:

> "(A) declaring that the method of engaging the workmen at Annexure `B' through respondent No.6 is in direct contravention of the provisions of Contract Labour (R & A) Act 1970 and this engagement is illegal, unconstitutional, null and void and further directing the respondent Nos.3 and 4 to treat these workmen as direct Security Guards

of the commission from the date of their first engagement and pay arrears of wages on that basis, within one month;

(B) declaring that the respondent Nos.3 and 4 have engaged the workmen at Annexure `B' in contravention of Articles 14, 16 and 39(d) and permanently restraining them from engaging any Security Guards through respondent No.6 or any other agency, save and except by engaging workmen at Annexure `B' as regular full time Security Guards;

(C) directing the respondent Nos.3 and 4 to treat the workmen at Annexure `B' as its regular employees from the first day of entry in service and further directing them to pay the wages of these workmen on that basis with money equivalent of leave, LTC, Bonus, medical reimbursement, house rent allowance, conveyance allowance and other benefits as are payable to regular workmen, within one month from the date of order;

(D) any other reliefs as may be deemed fit and proper be granted;

(E) costs of this petition which may be quantified at Rs.3000/-."

It is to be noted that such reliefs cannot be granted by the High Court, but, a reference will have to be made by the Competent Government to a competent Labour Court and the Labour Court, after affording due opportunity of hearing to the parties, will have to make an award either in support of the demands or rejecting the demands. The appellants-petitioners, after learning about the fate of the first application, which was declined by the Central Government, and was pending consideration in Special Civil Application No.3788 of 1985, without making an application for reference, filed the Writ Applications. All the Writ applications have been rejected.

2. Learned Counsel for the appellants submits that as the first application for reference was declined by the Central Government, the matter became *fate accompli* and no useful purpose would have been served even if the appellants had gone to the appropriate Government seeking a reference. When we asked the learned Counsel that can a direction be issued by this Court to the Central Government to make a reference in absence of any application to the appropriate Government or in absence of the demands raised by the disgruntled or dissatisfied workmen, the learned Counsel for the appellants submitted that in view of the parity, such Writ Applications are maintainable. His submission is that the High Court, while exercising its power under Article 226 of the Constitution of India, is competent to issue a direction to the Central Government to make a reference in relation to the demands raised in these Writ Applications. It was also submitted that in the Civil Application, a demand has been made that the appropriate Government/Central Government be asked to make a reference, therefore, the High Court can issue such a direction.

3. The opening words of Section-10 of the Industrial Disputes Act, 1947 are “where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing ..... “.

For application of such Section-10, there must be application of mind by the appropriate Government and such appropriate Government must form its opinion that some industrial dispute exists or is apprehended and if it so records, then, it has to make an order in writing to refer the dispute to a Board or to any other competent Authority/Court. The High Court, at the stage of Section-10, does never come in picture. The High Court cannot issue any direction to the Central Government to make a reference in relation to a subject for which no demand was made, nor the Central Government was ever asked to make a reference. For constituting jurisdiction, even in the Central Government, to make a reference, the first and foremost requirement is that there must be an application clearly stating that in view of the demands made by the workmen/union/representative union and the denial by the employer, a dispute had arisen or it is existing or is apprehended, therefore, a reference be made. It would be too much to say that a reference can be ordered by the High Court in a case where no application for reference is made, nor any request is made to the Central Government.

4. So far as our powers are concerned, we cannot exercise those powers, which are not vested in us. Article-226 does not confer powers upon the High Court to commit a breach of law, but, it confers powers to promote and propagate law. The High

Court would not be justified in directing the appropriate Government to make a reference in a case where no application for reference is made to the Central Government.

5. Learned Counsel for the appellants, however, submitted that in case Letters Patent Appeal No.26 of 2005 is allowed, then, the High Court can issue such a direction to the Central Government. The argument is misconceived. If Letters Patent Appeal No.26 of 2005 is allowed, then, the only direction by the High Court to the Central Government would be that a reference be made in the matter, which was submitted to the Central Government, wherein the Central Government declined to make a reference. Even in that matter, no relief beyond that can be granted.

6. It was, however, further submitted that if Letters Patent Appeal No.26 of 2005 is allowed, then, the High Court can issue a direction that in view of the judgement of the High Court, if an application for reference is made, a reference be made by the appropriate Government to the competent Court. We are at a loss to understand this argument. If the judgement of the High Court would bind the Central Government, then, there is no necessity of a direction by the High Court. If Letters Patent Appeal No.26 of 2005 is allowed and the facts are identical and similar, then, certainly, the

judgement delivered in Letters Patent Appeal No.26 of 2005 can always be pressed into service to make a demand for a reference. In any case, it would not be possible for us to grant any direction in favour of the appellants.

7. A feeble attempt was made to submit that the Union is also espousing the cause of the workers when it talks about the wages equivalent to the wages, which are paid to the permanent employees, and, therefore, at least such a relief be given. In our considered opinion, such a relief also cannot be given to the appellants because the questions, whether the members of the appellant-Union have been appointed on regular basis, they have equal qualifications, they come from proper sources and stand on the equal footing, will have to be considered by a competent forum in a duly made reference.

8. All these Writ Applications are misconceived. The learned single Judge though had dismissed these Writ applications on different grounds, but, we are of the opinion that the Writ Applications are not maintainable. As the Writ Applications are not maintainable, all these Letters Patent Appeals are dismissed. Each of the respondents shall be entitled to costs of Rs.2,000=00.

9. Consequently, Civil Application Nos.171/2005 to 176/2005 are

also dismissed.

[***R.S.Garg, J.***]

[***Ravi R.Tripathi, J.]***

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